Day 3 - Saturday 27 April 2024

8:30 am – 9:00 am: Registration & Coffee

- Shilling Building Foyer/Lecture Theatre

9:00 am – 9:45 am: Crypto Insolvencies

Chair: Prof. Laura COORDES (Sandra Day O'Connor College of Law, Arizona State University)

- Michael SCHILLIG (King's College London): *Law 3.0 – Smart Restructuring Tokens*
- Jura GOLUB (University of Osijek): *The Rights of Creditors and Third Parties Concerning Cryptoassets in the European Insolvency Proceedings*

Michael SCHILLIG (King's College London): *Law 3.0 – Smart Restructuring Tokens*

Statutory restructuring frameworks in many jurisdictions seem to be in almost constant reform mode. Despite notable successes for large corporates with significant resources, the utility these new restructuring frameworks can offer to small and medium sized entities is usually very limited.

In this paper, we offer a restructuring solution for any firm that issues financial assets in tokenised form. We draw on the automated contractual restructuring proposals that were widely discussed at the beginning of the 1990. Based on blockchain's smart contract capability, we suggest the creation of smart equity and debt tokens with an embedded restructuring function, that if triggered will automatically provide the issuing firm with a reduced debt load and a more sustainable capital structure.

Combining the automated restructuring proposals with Bebchuk's option model, our solution provides token holders with exactly what is due to them under the terms of the issue and incentivises a timely trigger of the restructuring function. Importantly, our design operates without the need for off-chain financial data being pushed on-chain through oracles. Because investors will be much better able to appreciate their treatment in the restructuring context, the cost of capital for firms using our model should be much reduced.

The paper does not only offer a scholarly discussion and legal analysis of the proposed solution but forms the basis for an actual smart contract suite that technically implements the proposal.

Jura GOLUB (University of Osijek): *The Rights of Creditors and Third Parties Concerning Cryptoassets in the European Insolvency Proceedings*

This paper examines the adequacy of the existing rules under Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (EIR Recast) concerning the protection of creditor and third-party rights over cryptoassets in the case of insolvency proceedings. While cryptoassets share similarities with traditional assets, their unique characteristics present challenges in determining their legal nature. According to the current classification, there are four subtypes of cryptoassets: exchange tokens, utility tokens, security tokens and Stablecoins. Given the taxonomy of cryptoassets, it is possible to make a fundamental distinction according to what a crypto token represents. Namely, exchange tokens do not represent any specific right for the holder, while on the contrary, other types of tokens represent a specific right. In German Civil Law, equating of electronic securities (and crypto security) with things represents a revolutionary legal solution, which is otherwise based on the Pandecten system, according to which only physical (corporeal) objects can be considered things. On the other hand, other Member States like Portugal, Hungary, Greece, and the Netherlands, do not recognise incorporeal objects as things. Hence, the question arises as to whether cryptoassets can be considered objects upon which rights *in rem* can be acquired or if they entail legal relationships giving rise to the right to claim?

In the context of insolvency proceedings concerning cryptoassets, the following situations are possible, and they may have effects on the rights of creditors and third parties: 1) the insolvency of a debtor who has granted a secured right in the form of cryptoassets as collateral to a creditor; and 2) the insolvency of a custodian managing cryptoassets on behalf of an investor. Article 6 of the EIR Recast stipulates that the courts of the Member State within whose territory insolvency proceedings are opened are competent for any action deriving directly from those proceedings and closely connected with them. This implies the application of *lex fori concursus*, but only if cryptoassets can be characterized as having obligatory legal character (right to claim).

On the other hand, if specific cryptoassets can be characterized as objects subject to rights *in rem*, then the application of Article 8 of the EIR Recast comes into consideration. This article stipulates that the initiation of insolvency proceedings has no effect on rights *in rem* of creditors or third parties with respect to tangible or intangible, movable or immovable property, or specific assets or groups of unspecified assets as a whole, changing from time to time, belonging to the debtor and located in the territory of another Member State at the time of the initiation of the proceedings. Although it is undisputed that crypto tokens have the character of intangible assets existing in the digital world, the question remains open as to whether rights *in rem* can be acquired on such assets? Specifically, whether the aforementioned provision of the EIR Recast is operative for cryptoassets? An additional question arising from the mentioned provision is the issue of localizing cryptoassets in another State as a condition for the application of the protection of third-party rights under Article 8 of the EIR Recast. In this case, cryptoassets subject to rights *in rem* are not subject to the open insolvency proceedings; instead, creditors enforce their rights in a separate proceeding.

For the consistent application of the EIR Recast and considering the autonomous interpretation of the terms it contains, it is essential to separately examine the characteristics of each type of cryptoassets to determine whether there exist rights of claim or rights *in rem* concerning such cryptoassets. Considering the increasing popularity and adoption of cryptoassets and their financial value, the treatment of these assets in insolvency proceedings is becoming an increasingly relevant topic in cross-border cases and warrants further consideration.

9:45 am – 10:30 am: Technology in Insolvency Procedures

Chair: Mr José CARLES (Carles | Cuesta LLP)

- Ruowei DU (Yantai University Law School): *The Reconstruction of Creditor's Right Protection under Bankruptcy Digitalization*
- Harry LAWLESS (World Bank): *Tools for Predicting Financial Distress and Implications for the Insolvency Process*

Ruowei DU (Yantai University Law School): *The Reconstruction of Creditor's Right Protection under Bankruptcy Digitalization*

When the digital technology is applied to the area of justice, the task of trial informatization it is not only to preventing the creditor's rights from being infringed, but also to strengthen the protection of the creditor's interest, which is just like the two sides of a coin. Thus, at present, during the process that bankruptcy cases are transferred to the online platform, we need to analyze the influence on the procedural rights and substantive rights dialectically. Referred to the problems happened in China that the application of the expansion of the court's function expansion is in advance of theory justification, the non-uniform online platforms nationwide and imperfect rules for online bankruptcy cases disposal, it is essential to pay attention to the creditor's rights during the reform of bankruptcy digitalization. In order to realize the reconstruction of creditor's rights protection, the existing rules and futuristic visions among China, EU and World Bank should be compared in consideration of the different attitude awards bankruptcy cases online disposal. Therefore, the basic principles must be clarified at first, and the specific measures including perfecting the rules and continuously promoting the integration of technological innovation to balance the procedural efficiency and fairness and justice, and then protect the procedural rights and substantive rights of the creditor.

Part One is the rethinking of the influence of digital bankruptcy on the creditor's rights. The application of case online mechanism is to reduce the cost and enhance the efficiency to help the litigants access to justice. Some key processes of bankruptcy cases dealing has been changed by bankruptcy digitalization, so the creditor's procedural rights also have been influenced, including the right to know, the voting right and supervision right. Besides, information data completed by online platforms would affect property right and personal right because of information data collection and information data acceptance. However, it remains to be debated whether the goal of the reform of bankruptcy trial

informatization has been achieved, and the shaping of the powers of the court and the administrator, as well as the impact on the rights of the parties.

Part Two is the reason for insufficient protection of creditors' rights. Firstly, at present the court's function Expansion precedes theoretical justification and the second reason is the rules governing new technologies are lagging behind. The third one is for lack of supervision and self-discipline of the service suppliers.

Part Three is the comparison of governance experiences on bankruptcy digitalization.

Related rules, guidelines and regulations on e-court and artificial intelligence has been issued in recent years both in China hand EU. The problems caused by online bankruptcy cases disposal differed in China and EU, thus the application of e-curial, the non-uniform online platforms and imperfect rules must be solved jointly.

Part Four is the fundamental principles to protect the creditor's right under digitalization of bankruptcy cases disposal. The first one is balance fairness and efficiency. And the second one is the transparency principle and adhering it could reduce the difficult of creditor's access to information while optimizing bankruptcy cases handling. The third principle is economic bankruptcy.

Part Five is the specific measures to protect the creditor's rights under digitalization bankruptcy. We need to standardize online disposal rules including creditor meeting notification, personal information collection and recognition and the voting, on the other, the next step is to improve the construction of integrated platform nationwide.

Harry LAWLESS (World Bank): *Tools for Predicting Financial Distress and Implications for the Insolvency Process*

This paper explores the current state of tools for the prediction of financial distress, in the context of the insolvency process. Predictive tools have significant potential to enable the detection of financial distress accurately and at an early stage. Examining the history of, and contemporary advances in, predicting financial distress in the field of statistics, this paper observes that artificial intelligence is being used in a way that builds on pre-existing non-technological prediction tools. The evidence suggests artificial intelligence will improve our effectiveness at predicting financial distress. The paper then explores the applications of these processes in the form of Early Warning Tools – as championed in the European Union's Directive on Restructuring and Insolvency (2019/1023). Finally, it explores legal and regulatory issues connected with embedding predictive tools in insolvency frameworks, including challenges for successfully deploying predictive tools in Emerging and Developing Economies.

10:30 am – 11:00 am: Coffee Break

11:00 am – 12:15 pm: Comparative Studies

Chair: Prof. Yseult MARIQUE (University of Essex)

- Emilie GHIO (University of Edinburgh) and Donald THOMSON (Thorntons LLP): *Is Insolvency Stigmatised?*
- Charles Z QU (Charles Darwin University): *If It Ain't Broke, Don't Fix It: No Need to Adopt the COMI Approach to Cross-Border Recognition in Common Law* [online]
- Matthew CHIPPIN (University of Leeds): *The Anti-deprivation Rule in Canada and England – Commonwealth Divergence*
- Wee MENG SENG (National University of Singapore): *The Duet between Winding Up Foreign Companies and Recognition in Cross-Border Insolvency Law*

Emilie GHIO (University of Edinburgh) and Donald THOMSON (Thorntons LLP): *Is Insolvency Stigmatised?*

Emilie and Donald will discuss the first step of their work-in-progress project entitled "The obstacles to the rescue culture: Why are directors afraid of help?" This international and comparative project was launched in October 2023 and is composed of 28 international contributors from 19 different jurisdictions.

The premise of the project is that over time, and across the globe, a rescue culture has emerged through the implementation of various rescue procedures and tools which are enshrined in domestic legislation, as well as in European instruments and international initiatives. However, despite its much-lauded status, recourse to rescue in many jurisdictions around the world appears to have been remarkably low when compared to liquidation. This indicates an inconsistency between the legal and policy priorities of the last decades and the current corporate reality. By way of example, in 2022, only 6% of all registered insolvency cases were rescue cases in the UK; 1.9% in New Zealand; 1.8% in Ireland; and 1.6% in Italy.

One of the explanations proffered to explain such low uptake is the perceived ubiquity of stigma (McCormack (2009); Bork (2012); Omar and Gant (2016); Tajti (2017)). It is argued that the sense of stigma around insolvency and business failure acts as an obstacle to the successful implementation of the rescue culture because corporate debtors may be hesitant to initiate corporate rescue processes and disclose their financial troubles (Institute of Chartered Accounts of England and Wales (2017)).

For a phenomenon argued to hamper the development and efficacy of the rescue culture, a policy priority around the world for decades, the study of the level and impact of insolvency stigma appears to have been summarily neglected. While some research on the topic is available, it is largely focused on personal bankruptcy and is limited to a single jurisdiction, the United States (Sullivan et al. (1989); Sullivan et al. (2006); McIntyre (1989); Efrat (2006); Sousa (2013)). To date, no comparative analysis of the levels and impact of stigma on corporate insolvency has been conducted.

Our presentation will centre on the results of the first multi-jurisdictional systematic literature review in the area, aimed at identifying, selecting, and critically evaluating existing research and outputs to address formulated research questions. Building on a pilot study conducted in 2023 (Ghio and Thomson, Working Paper, Wharton-Harvard Insolvency and Restructuring Initiative (2023)) , this extensive literature review will answer three main research questions:

1) Is there a prominent narrative relating to the stigma associated with insolvency in selected jurisdictions?
2) Do domestic narratives and debates regarding the stigma of insolvency vary from one country to another?
3) Is there a correlation between stigma narratives and rescue procedures?

The jurisdictions selected include: Australia; Canada; the European Union; France; Germany; India; Ireland; Italy; Japan; Lithuania; the Netherlands; New Zealand; the People's Republic of China; Romania; South Africa; Switzerland; Uganda; the United Kingdom; and the United States. Participants from each jurisdiction will have been provided with a questionnaire asking specific questions about the narrative surrounding stigma in academic literature, policy documents, and initiatives, as well as legislative debates. In order to answer the three research questions outlined above, the authors will have reviewed the questionnaires, provided a systematic overview of the responses, and matched the responses to the uptake of rescue procedures in each jurisdiction.

The paper and presentation will be structured as follows. A brief introduction to the project will be introduced in Section 1; in Section 2, the background and rationale for the study will be presented, namely the low uptake of rescue procedures in most jurisdictions throughout the world and the dichotomy between law in books and law in action. In Section 3, the systematic literature review methodology will be explained; in Section 4, the results and findings will be uncovered; and in Section 5, a discussion of the project's next steps will be presented.

Charles Z QU (Charles Darwin University): *If It Ain't Broke, Don't Fix It: No Need to Adopt the COMI Approach to Cross-Border Recognition in Common Law* [online]

The common law rules on cross-border insolvency have been described as being 'in a state of arrested development.'[1] In the UK, due to the existence of statutory norms on cross-border insolvency, this is 'even more true today.'[2] In jurisdictions where no statutory norms on cross-border insolvency have been put in place, the court still needs to resort to the common law rules. An example is the relevance of rules on judges' non-statutory powers to assist foreign proceedings in British Overseas Territories and Hong Kong. The significance of these rules is demonstrated in a series of cases decided in recent years, where requests for cross-border assistance were made to the courts in Bermuda, Cayman Islands, or Hong Kong. The debtor in those case is very often the holding company, or a member, of a so-called 'red chip' corporate group. A red-chip entity is one where the company is registered in one of the British offshore territories, registered in Hong Kong but has its business operations in Mainland China.

One of the issues arisen in almost all of the cases mentioned in the preceding paragraph is the choice of connecting factor for the purposes of cross-border recognition decisions. The common law rule, as stated in Dicey, Morris & Collins on Conflict of Laws, says that '[t]he authority of a liquidator appointed under the law of the place of incorporation is

[1] Ian F Fletcher, *Insolvency in Private International Law* (OUP 1999) 93.
[2] Roy Goode, Principles *of Corporate Insolvency Law* (14th ed, Sweet & Maxwell) [16.57].

recognised in England (Rule 193 (1)).'[3] Rule 193 (1), however, does deal with the situation where the foreign liquidator is appointed outside the place of incorporation. In a case decided before Singapore's adoption of the Model Law, Re Opti-Medix Ltd (Opti-Medics),[4] Aedit Abdullah JC of the Singapore High Court granted the recognition and assistance request by a Japanese liquidator appointed in Japan, which was the debtor's COMI, not its place of incorporation. His Honour did so through a common law Centre of Main Interest (COMI) approach, which the judge decided to adopt in Singapore.

In a case decided last year,[5] the Hong Kong Companies Court announced, obiter dicta, that the common law COMI approach should also be adopted for Hong Kong. In reaching its decision, the Court observed, inter alai, an officeholder appointed in the debtor's place of incorporation would only be recognised in Hong Kong if the assistance sought was one of 'managerial assistance' rather than judicial assistance. In a subsequent case, the same Court expressed the view that recognition might be granted to a liquidator appointed in the place of incorporation where the wording in the requested order showed that the liquidator, in seeking the assistance, was standing in the shoes of the board of the debtor.

This paper evaluates the stance of the Companies Court just discussed and discuss the flexibility of Rule 193. This is done through an analysis of (i) a body of earlier cases which indicate the court's recognition of proceedings opened outside the place of incorporation, and (ii) a group of more recent Bermuda and Cayman cases, decided either before or after Opti-Medics, which demonstrates judges' non-statutory power to assist proceedings opened outside the place of incorporation. It argues that (i) Rule 193 is flexible enough to accommodate the need for assisting non-place of incorporation proceedings, (ii) the basis of the court's decision is whether there are commercial or policy objections to granting the assistance requested, and (iii) as a connecting factor, in the context of non-statutory powers, the place of incorporation rule is superior to the common law COMI approach.

Matthew CHIPPIN (University of Leeds): *The Anti-deprivation Rule in Canada and England – Commonwealth Divergence*

Bankruptcy's prohibition on avoidance transactions is "…about defining the insolvent estate and facilitating its distribution in a way that is fair."[6] What is fair has been interpreted differently by different jurisdictions and each's conception of fairness has ultimately influenced how they have implemented anti-avoidance measures in bankruptcy law. These anti-avoidance measures derive from broad insolvency law principles which are still reflected in application of the anti-deprivation rule. The anti-deprivation rule is a rule of public policy which prevents the taking of assets from the estate upon an entity's insolvency.[7] The anti-deprivation rule, although not explicit in statute, is an implicit prohibition which emanates from the long history of the development of common law

[3] Lord Collins of Mapesbury (ed), *Dicey, Morris & Collins on Conflict of Laws* (11th ed, Sweet & Maxwell), Rule 193(1).
[4] [2016] 4 SLR 321 [26].
[5] *Re Global Brands Group Holdings Ltd (In Liq)* (*Global Brands*) [2022] 3 HKLRD 316.

[6] Hamish Anderson, *The Framework of Corporate Insolvency Law,* Oxford University Press: 2017, 15.59.
[7] *Lomas & Ors v JFB Firth Rixson Inc & Ors* [2012] EWCA Civ 419.

bankruptcy and insolvency statutes. The rule, although not specified in the relevant legislation of Canada or the United Kingdom, is a rule of public policy ultimately emanating from the statute.[8]

This paper's focus is on that rule.

In October 2020, in the midst of the coronavirus pandemic, the Supreme Court of Canada [SCC] issued a landmark decision recognizing the anti-deprivation rule.[9] Interesting in this SCC decision was an overt differentiation from the United Kingdom Supreme Court [UKSC] regarding how and when the rule should apply. Whereas the UKSC takes a purpose-based approach, the SCC has rejected this in favour of an effects-based approach.[10] Perhaps the greatest difference in opinion between the Canadian and English approaches lay in the latter's recognition that the rule should do its best to give effect to contractual terms, even when such terms may otherwise offend an effects-based rule.[11] This effectively creates a large void between the Canadian and English applications of the rule, with the former jurisdiction believing that business purpose is irrelevant when applying the anti-deprivation rule, and the latter seeing business purpose as essential to that analysis.

The reasons for this discrepancy are what this paper is attempting to explore. This paper is inspired by the legal traditions comparative approach.[12] Since both jurisdictions developed through unique histories, such developments are of key importance in the discussion of the anti-deprivation rule in both jurisdictions. This paper will be divided into three parts. The first part is a brief historical assessment of the development of both bankruptcy and anti-avoidance laws in both England and Canada, with a particular emphasis upon the impact of federalism in the Canadian context. This will be utilised to illustrate the context within which the systems of both countries developed and have influenced later application of anti-avoidance principles. The second part is a discussion of pertinent anti-deprivation rule cases most notably *Chandos Construction,*[13] the leading Canadian anti-deprivation rule case, and *Belmont Park,*[14] the leading English Case. While also discussing the cases in depth, the paper will explore differences between the application of the anti-deprivation rule in both the Canadian and English contexts. As mentioned previously, in Canada, the rule largely follows an effects-based analysis while in England it follows a purpose-based one. This distinction is not only theoretical but has an immense practical impact as well. Finally, the third part will analyse the development of anti-avoidance laws alongside the modern application of the anti-deprivation rule showing how the latter is ultimately influenced by historical context. These historical antecedents, this paper argues, are of fundamental importance in understanding how and why the anti-deprivation rule in Canada has diverged from that of England.

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[8] *Chandos Construction Ltd. v. Deloitte Restructuring Inc.,* 2020 SCC 25, para. 33.
[9] *Chandos Construction Ltd. v. Deloitte Restructuring Inc.,* 2020 SCC 25
[10] Ibid at paras. 11, 39.
[11] *Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited and Lehman Brothers Special Financing Inc* [2011] UKSC 38, at para. 103.
[12] See H. Patrick Glenn, *Legal Traditions of the World,* 4th ed. (2010: Oxford).
[13] *Chandos Construction Ltd. v. Deloitte Restructuring Inc.,* 2020 SCC 25
[14] *Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited and Lehman Brothers Special Financing Inc* [2011] UKSC 38.

Comparative studies between commonwealth jurisdictions are of increasing importance within the modern context. Comparative corporate insolvency research between Canada and the United Kingdom is perhaps more important now than ever given the post-Brexit situation. In order to facilitate greater certainty amongst these two natural trading partners, it is necessary that each understands the legal system of the other while also understanding points of divergence. It is my hope that this paper will be of relevance to the larger discussion of increased relations between the United Kingdom and Canada.

Wee MENG SENG (National University of Singapore): *The Duet between Winding Up Foreign Companies and Recognition in Cross-Border Insolvency Law*

The law on the winding up of foreign companies has not kept pace with developments in cross-border insolvency law. Within the British Commonwealth, the doctrine of ancillary liquidation of foreign companies shared the same roots with the recognition of foreign liquidations. The place of incorporation of a company was the criterion in determining the jurisdiction which was entitled to have the most say in the company's liquidation, and consequently, the jurisdiction to wind up foreign companies has been said to be an 'exorbitant jurisdiction'. That approach was consistent with commercial realities and consistent with the view that matters concerning the constitution and management of the affairs of a company should be determined by the law of the place of its incorporation. This paper contends that the former has ceased to be so in many cases and the latter is too narrow. With the rise of offshore jurisdictions serving as convenient places of incorporation and little else, companies which are incorporated in these jurisdictions, sometimes referred to as letterbox jurisdictions, have few connections to the jurisdictions. Next, liquidation is far more than a transfer of control from the shareholders and directors to the liquidator. It is a creature of statute enacted by Parliament to achieve various statutory purposes. The liquidator is given powers which have no counterpart in the company's pre-liquidation phase. Therefore, a new approach to the law on the winding up of foreign companies is needed.

The UNCITRAL Model Law on Cross-border insolvency is built on the twin foundations of recognition and co-operation. It does not allocate jurisdiction in cross-border insolvencies because, first, it is not an international treaty, and secondly, in any event, jurisdictions would want to retain the right to open local insolvency proceedings. However, although the Model Law says nothing on the criterion for the opening of local proceedings, it indirectly and implicitly limits the international effectiveness of local proceedings by restricting recognition to COMI and establishment. It relegates the place of incorporation to a rebuttable presumption in the ascertainment of COMI. But for the recent developments sanctioning the shifts of COMI to letterbox jurisdictions post-liquidation, this arrangement ensures that in the Model Law universe, there is substantial alignment in the economic substance ungirding recognition and opening of local proceedings. As a result, for jurisdictions which have adopted the Model Law, while continued adherence to the view that the jurisdiction to wind up foreign companies is an 'exorbitant jurisdiction' is unhelpful and misleading, the harm arising therefrom is probably limited. However, the situation is very different for jurisdictions which have not adopted the Model Law yet, but

COMI has been accepted as a or the main criterion for recognition of foreign proceedings, which may be referred to as the quasi-Model Law universe. The prime example here is Hong Kong.

The disconnect between recognition and opening of local proceedings was revealed starkly in recent Hong Kong cases. While the law is still evolving, the first steps towards alignment based on COMI have been taken. This development coincided with signs of friction between the Hong Kong courts and courts in the offshore jurisdictions, eg Cayman Islands, BVI, etc, where the common law universe operates.

This paper argues that, within the Model Law universe and quasi-Model Law universe, the jurisdiction to wind up foreign companies should no longer be seen as an exorbitant jurisdiction and the 'three core requirements' should be re-examined. It is unlikely that the offshore jurisdictions will view this favourably. While communication between the courts may lead to co-ordination in specific cases, the divergent and sometimes conflicting interests of the stakeholders, the courts and the jurisdictions are serious impediments to a macro resolution. Would debtors and creditors respond to this by contractualising cross-border insolvency? This may be a crucial factor impacting on the outcome.

12:15 pm – 13:15 pm: Sovereign Debt

chair: Prof. Christoph PAULUS (III, South Square)

- Charles HO WANG MAK (Robert Gordon University): *Sovereign Debt Mechanisms and Institutional Asymmetries: An Analysis from the Global South's Perspective*
- Maria Belén PAOLETTA (University of Buenos Aires) and Iván LEVY (University of Buenos Aires): *Revisiting International Law: Safeguarding Human Rights in Sovereign Debt Restructuring Processes*
- Nthope MAPEFANE (University of Pretoria): *The Sovereign Debt Issue in SADC: Management and Restructuring*

Charles HO WANG MAK (Robert Gordon University): *Sovereign Debt Mechanisms and Institutional Asymmetries: An Analysis from the Global South's Perspective*

This paper scrutinises the existing institutional asymmetries in sovereign debt mechanisms, with an emphasis on their implications for the Global South. The increased dominance of private sector creditors in these systems exacerbates the imbalance against sovereign debtors. The institutional structure, exemplified by the Debt Service Suspension Initiative ('DSSI), due to its voluntary nature, does not effectively protect the interests of sovereign debtors from the Global South, particularly in economic crises such as the COVID-19 pandemic.

A critical examination of the Common Framework and the Paris Club's operations reveals how these paradigms inadvertently put the Global South at a disadvantage. The paper elucidates how, under the pretext of the comparability of treatment provision, debtor countries are prevented from accepting less favourable debt relief terms from private

creditors than those negotiated with DSSI creditors. The non-legally binding status of these provisions provides private creditors with the liberty to decline these requests, putting debtor nations' financial stability at risk, especially for low-income countries.

Further, this paper underscores the limited scope of the Paris Club's mandate, which pertains only to debts held by sovereign creditors. This results in the indirect handling of sovereign debt owned by private creditors. Such an approach, coupled with the non-legally binding nature of the 'Agreed Minutes' clause, obliges sovereign debtors to seek equal treatment from all creditors, including the private sector. This institutional exclusion, together with the exclusivity of negotiations to reform the sovereign debt restructuring process, effectively silences crucial stakeholders, perpetuating a cycle of 'debt-trap diplomacy'.

In conclusion, this paper underlines the pressing need for comprehensive reform of existing sovereign debt mechanisms, advocating for more inclusive, equitable, and legally binding institutional structures that champion the interests of sovereign debtors from the Global South. It supports institutional modifications that enhance transparency, balance of power, and legal enforcement, thereby ensuring that debt relief measures genuinely serve those who are most in need. By analysing these aspects, the paper sheds light on the Global South's agency in shaping and contesting the economic dimension of global order, proposing alternatives that reflect their unique challenges and perspectives.

Maria Belén PAOLETTA (University of Buenos Aires) and Iván LEVY (University of Buenos Aires): *Revisiting International Law: Safeguarding Human Rights in Sovereign Debt Restructuring Processes*

The paper will aim to analyze the relationship between sovereign debt restructurings processes and human rights. The hypothesis will reason that debtor States do not typically consider the impact of their actions on human rights when intending to restructure its sovereign debts, arguing that this disengagement has been greatly facilitated by the absence of an adequate international architecture able to motivate such considerations.

Certain findings are expected to be unveiled: firstly, most case law on this subject reveal that debtor States are not particularly concerned with developing a legal technique that discursively resorts to safeguarding human rights in litigious contexts with holdouts. Moreover, it will be asserted that the behavior of certain holdouts has an adverse effect on the public finances of insolvent states. Payments to so-called "vulture funds" made outside of negotiated restructuring agreements negatively impact public spending, harming economic rights. Finally, it will be suggested that the current international legal architecture is not optimal for addressing these issues. As one of the greatest developments in the matter is presented under soft law provisions and a progressive fragmentation in the field of Public International Lawis evidenced, it will be observed that these phenomena strain processes and ultimately provoke a dynamic in which economic rights are relegated to a secondary role.

The paper will conclude that there are certain hard-law principles already existing in Public International Law that should be unequivocally applied in the ecosystem of sovereign debt restructurings. Those principles, accordingly, should be necessarily enriched by International Human Rights Law to successfully overcome the aforementioned issues.

Nthope MAPEFANE (University of Pretoria): *The Sovereign Debt Issue in SADC: Management and Restructuring*

A decade of easy money has come to a crashing end, the result of the COVID-19 pandemic, the wars in Congo, Ukraine and Palestine/Israel, surging import prices, and rising interest rates globally as central banks respond to inflationary concerns. As a result, Africa's debt landscape has greatly changed, not only in terms of an increase in debt levels, but also in composition. African countries are exposed to newer challenges and many of the emerging markets are at risk of default, austerity, and economic and political upheaval. This paper focuses on the issue of African sovereign debt management and renegotiation/restructuring, with a particular concentration on the countries that are members of the Southern Africa Development Community (SADC). While the current challenge of debt sustainability and management are a concern for all African countries, this paper seeks to explore these issues in the specific context of the SADC region SADC forms one of the regional economic communities (RECs) recognised by the African Union (AU) as forming one of the building blocks of the African Continental Free Trade Area (AfCFTA).

This paper seeks to both understand the debt challenges facing these countries and to offer some policy-oriented suggestions on how they can more effectively address these.

It begins by briefly providing some historical background to the current debt situation in the SADC region. Thereafter, it describes the current debt situation in the region. A synopsis of the current debt landscape in the SADC region in the context of the global debt situation and the current economic climate is provided. This research acknowledges that the debt challenges faced by African countries before the pandemic has only exacerbated in the current global approaches to debt renegotiation. To that end the paper takes a comparative look at the current global approaches of countries facing problems in managing their external debt caused by unforeseen circumstances.

It is notable that sovereign debt crises occur regularly and often violently, and yet there is no legally and politically recognized procedure for restructuring the debt of bankrupt sovereigns. that provides a timely discussion of the constrained external debt

and development finance options that may be available to the SADC countries. In making this concluding assessment, the paper also looks at the role of the IMF Article IV surveillance mechanism in general and in the SADC region and its role in warning countries about their financial vulnerabilities

13:15 pm – 13:30 pm: Closing Remarks

- Prof. Laura COORDES (Sandra Day O'Connor College of Law, Arizona State University); Prof. Christoph HENKEL (Drake University Law School); and Prof. Adrian WALTERS (Chicago-Kent Law School)

13:30 pm – 14:30 pm: Lunch

- Shilling Building Foyer

14:30 pm – 17:00 pm: self-funded Visit to Windsor Castle

- Windsor SL4 1NJ